

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL
CORPORATION

Plaintiffs

- and -

DOW JONES AND COMPANY, ROB COPELAND, JACQUIE MCNISH and
JEFFREY MCFARLANE

Defendants

**MOTION RECORD OF THE DEFENDANTS,
DOW JONES AND COMPANY, ROB COPELAND and JACQUIE MCNISH**

January 19, 2018

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Defendant

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Court File No.: CV-17-586094

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

**THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL
CORPORATION**

Plaintiffs

- and -

**DOW JONES AND COMPANY, ROB COPELAND, JACQUIE MCNISH and
JEFFREY MCFARLANE**

Defendants

NOTICE OF MOTION

THE DEFENDANTS, Dow Jones and Company, Rob Copeland and Jacquie McNish, will make a motion to a judge of the Commercial List, on a date to be fixed by the Court, at the courthouse located at 330 University, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR AN ORDER:

1. Transferring this action to the Commercial List;
2. Providing that this action will be case managed together with the action bearing Court File No. CV-17-587463-00CL; and
3. Such further and other relief as counsel may request and this Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. On November 7, 2017, The Catalyst Capital Group Inc. ("**Catalyst**") and Callidus Capital Corporation ("**Callidus**") commenced an action in the Ontario Superior Court of Justice against, among others, Rob Copeland, bearing Court File No. CV-17-586096 (the "**Conspiracy Action**").
2. On November 7, 2017, Catalyst and Callidus commenced an action in the Ontario Superior Court of Justice against, among others, Rob Copeland, bearing Court File No. CV-17-586094 (the "**Defamation Action**").
3. Pursuant to the Order of the Honourable Justice Hailey dated November 16, 2017, the Conspiracy Action was transferred to the Commercial List and was ordered to be case managed. The Conspiracy Action is now Court File No. CV-17-587463-00CL.
4. The Defamation Action is a Toronto Region matter.
5. The Conspiracy Action and the Defamation Action arise from the same set of facts and ought to be case managed together. The following is a summary of some of the factual and legal overlaps between the allegations in the Statements of Claim in the two Actions:
 - (a) the prayers for relief in para. 1 of both Statements of Claim seek
 - (i) damages for defamation and for conspiracy;
 - (ii) punitive damages; and
 - (iii) declarations that the Defendants defamed the Plaintiffs;

- (b) the Statements of Claim in both Actions refer to the same article published by Dow Jones and Company, Rob Copeland and Jacquie McNish (the “**Dow Jones Defendants**”) in the Wall Street Journal on August 9, 2017 (Defamation Action para. 29, Conspiracy Action para. 103);
- (c) the Statements of Claim in both Actions allege contacts in or about July 2017, between Jeffrey McFarlane and Copeland to discuss information regarding the Plaintiffs’ accounting practices (Defamation Action para. 10, Conspiracy Action para. 86);
- (d) the Statements of Claim in both Actions allege that McFarlane made false and defamatory statements to Copeland during these contacts (Defamation Action paras. 12-13, Conspiracy Action para. 86);
- (e) the Statements of Claim in both Actions allege that on August 8, 2017, Copeland and McNish met with representatives of the Plaintiffs, that the information provided to Copeland and McNish during this August 2017 meeting contradicted the McFarlane statements (Defamation Action paras. 19 and 22-24, Conspiracy Action paras. 87-90); and
- (f) the Statements of Claim in both Actions allege that the article published by the Dow Jones Defendants was false and defamatory in the same 13 respects (Defamation Action paras. 31-34, Conspiracy Action para. 112).

6. Certain other Defendants to the Conspiracy Action have indicated that they consent to the order sought in this motion.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The Affidavit of Karina McIntosh, sworn January 18, 2018; and
2. Such further and other materials as counsel may advise and the Court may permit.

January 18, 2018

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Defendant

THE CATALYST CAPITAL GROUP INC.
et al
and
Plaintiffs

DOW JONES AND COMPANY et al.
Defendants

Court File No.: CV-17-586094

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

NOTICE OF MOTION

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McNish

Court File No.: CV-17-586094

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL
CORPORATION

Plaintiffs

- and -

DOW JONES AND COMPANY, ROB COPELAND, JACQUIE MCNISH and
JEFFREY MCFARLANE

Defendants

**AFFIDAVIT OF KARINA MCINTOSH
(Sworn January 18, 2018)**

I, Karina McIntosh of the City of Toronto, in the Province of Ontario, MAKE
OATH AND SAY:

1. I am a legal assistant at St. Lawrence Barristers LLP, counsel for the Defendants, Dow Jones and Company, Rob Copeland and Jacquie McNish (collectively, the “**Dow Jones Defendants**”) in this Action (the “**Defamation Action**”), and for Rob Copeland as a Defendant in a related Action bearing Court File No. CV-17-586096 (the “**Conspiracy Action**”). I therefore have knowledge of the matters to which I hereinafter depose. Where I do not have personal knowledge, I have stated the source of my knowledge and believe the information to be true.

2. On November 7, 2017, The Catalyst Capital Group Inc. (“**Catalyst**”) and Callidus Capital Corporation (“**Callidus**”) commenced the Conspiracy Action in the Ontario Superior Court of Justice against, among others, Rob Copeland. A copy of the Statement of Claim in the Conspiracy Action is attached hereto as Exhibit “1”.

3. Also on November 7, 2017, Catalyst and Callidus commenced the Defamation Action in the Ontario Superior Court of Justice. A copy of the Statement of Claim in the Defamation Action is attached hereto as Exhibit “2”.

4. Pursuant to the Order of the Honourable Justice Hainey dated November 16, 2017, the Conspiracy Action was transferred to the Commercial List and was ordered to be case managed. A copy of the Order of the Honourable Justice Hainey dated November 16, 2017 is attached hereto as Exhibit “3”. The Conspiracy Action is now Court File No. CV-17-587463-00CL.

5. The Plaintiffs in both the Conspiracy Action and the Defamation Action are being represented by the same counsel, Moore Barristers.

6. On December 12, 2017, Moore Barristers contacted St. Lawrence Barristers by e-mail regarding service of the Statements of Claim in the Conspiracy Action and the Defamation Action.

7. On January 5, 2018, St. Lawrence Barristers served and filed Notices of Intent to Defend on behalf of the Dow Jones Defendants in both Actions.

8. On January 12, 2018, the Defendant, Rob Copeland, served a Demand for Particulars and Request to Inspect in the Conspiracy Action, a copy of which is attached hereto as Exhibit “4”.

9. Also on January 12, 2018, the Dow Jones Defendants served a Demand for Particulars and Request to Inspect in the Defamation Action, a copy of which is attached hereto as Exhibit “5”.

10. The Statements of Claim in the Defamation Action and the Conspiracy Action arise from the same sequence of events surrounding articles published by the Dow Jones Defendants in the Wall Street Journal.

11. I swear this Affidavit in support of the Defendants' motion to transfer the Defamation Action to the Commercial List and to have the Defamation Action and the Conspiracy Action case managed together, and for no other or improper purpose.

SWORN BEFORE ME at the City of Toronto,
in the Province of Ontario, this 18th day of
January 2018.

A Commissioner for taking Affidavits


Jennifer Saville



KARINA MCINTOSH

This is **Exhibit "1"** referred to in the Affidavit of Karina McIntosh, sworn January 18, 2018



Commissioner for Taking Affidavits

JENNIFER P. SAVILLE

Court File No.

CV-17586096

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL
CORPORATION**

Plaintiffs

and

**WEST FACE CAPITAL INC., GREGORY BOLAND, M5V ADVISORS INC.
c.o.b. ANSON GROUP CANADA, ADMIRALTY ADVISORS LLC, FRIGATE
VENTURES LP, ANSON INVESTMENTS LP, ANSON CAPITAL LP, ANSON
INVESTMENTS MASTER FUND LP, AIMF GP, ANSON CATALYST
MASTER FUND LP, ACF GP, MOEZ KASSAM, ADAM SPEARS, SUNNY
PURI, CLARITYSPRING INC., NATHAN ANDERSON, BRUCE
LANGSTAFF, ROB COPELAND, KEVIN BAUMANN, JEFFREY
MCFARLANE, DARRYL LEVITT, RICHARD MOLYNEUX, AND JOHN
DOES #1-10**

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT(S):

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff.
The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$1,000.00 for costs, within the time for serving and filing your Statement of Defence, you may move to have this proceeding dismissed by the Court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's Claim and \$400.00 for costs and have the costs assessed by the Court.

Date November 7, 2017

Issued by 

Local Registrar

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AND TO: KEVIN BAUMANN

AND TO: JEFFREY MCFARLANE

AND TO: DARRYL LEVITT

AND TO: RICHARD MOLYNEUX

AND TO: AND JOHN DOES #1-10

CLAIM

1. The Plaintiffs claim against the Defendants, on a joint and several basis, for the following:
 - (a) General and aggravated damages in the amount of \$450,000,000 for defamation, injurious falsehood, the tort of causing loss by unlawful means (intentional interference with economic relations), civil conspiracy and unjust enrichment;
 - (b) In the alternative, an accounting of any and all gains from transactions in Callidus Shares (defined *infra*) and the derivative securities thereof on or after August 9, 2017, including without limitation gains from short positions covered on or after that date; and, to the extent that such amounts are greater than any amount of general damages awarded, disgorgement or such other equitable remedy in relation to such gains;
 - (c) A Declaration that the Defendants defamed the Plaintiffs;
 - (d) A Declaration that the Defendants breached s. 126.1 and s. 126.2 of the *Securities Act* (Ontario), RSO 1990, c. S.5 (the “*Securities Act*”);
 - (e) A Declaration that the Individuals Defendants (defined *infra*) are personally liable for the unlawful actions carried out by or through the corporations and/or other entities that are named as Defendants;
 - (f) Special damages for costs associated with the “investigation” of the willful misconduct of the Defendants, or some of them;
 - (g) Punitive and/or aggravated damages as against all of the Defendants in the amount of \$5,000,000.00;
 - (h) Prejudgment and postjudgment interest in accordance with sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - (i) The costs of this action, plus the applicable taxes; and
 - (j) Such further and other relief as to this Honourable Court may seem just.

(A) THE PLAINTIFFS

2. The Plaintiff, The Catalyst Capital Group Inc. ("Catalyst"), is a corporation with its head office located in Toronto, Ontario. Catalyst is widely recognized as the leading firm in the field of investments in distressed and undervalued Canadian situations for control or influence, known as "special situations investments for control".

3. The Plaintiff, Callidus Capital Corporation ("Callidus"), is a corporation with its head office located in Toronto, Ontario. Callidus is a publicly traded asset-based lender that provides capital on a bridge basis to meet the financing requirements of companies that cannot access traditional lending sources.

4. Callidus engages in asset-based lending by lending to corporate businesses and taking security against the assessed or appraised value of working capital and an identifiable portfolio of assets, which may include accounts receivable, inventory, equipment, real estate, and other assets.

5. In April 2014, Callidus made an initial public offering ("IPO") of approximately forty per cent of its issued and outstanding shares. Prior to the IPO, Callidus was wholly owned by Catalyst. Investment funds managed by Catalyst continue to own or control approximately 2/3rds of the issued and outstanding shares of Callidus.

6. The shares of Callidus trade on the Toronto Stock Exchange under trade symbol CBL.TO (the "Callidus Shares").

(B) THE DEFENDANTS

7. The Defendant West Face Capital Inc. ("West Face") is a Toronto-based private equity corporation with assets under management of approximately \$2.5 billion. West Face competes

with Catalyst in the special situations for control investment industry. One of the principals of West Face is the Defendant Gregory Boland ("Boland").

8. West Face and Boland are vicariously liable for the acts or omissions of one another. In the alternative, West Face and Boland acted as agent for each other.

9. The Defendant MSV Advisors Inc. carrying on business as Anson Group Canada ("Anson Canada"), is a hedge fund incorporated in Ontario. At all relevant times, Anson Canada has entered into securities transactions on public markets, including short sales. Anson Canada is vicariously liable for the acts and omissions of its employees.

10. The Defendant Admiralty Advisors LLC ("Admiralty") is a limited liability company organized pursuant to the laws of Texas. At all relevant times, Admiralty has engaged in securities transactions, including short sales.

11. The Defendant Frigate Ventures LP ("Frigate") is a limited partnership organized pursuant to the laws of Texas. At all relevant time, Frigate was a registered investment fund manager with the Ontario Securities Commission that engaged in securities transactions, including short sales. Admiralty is the general partner of Frigate.

12. The Defendant Anson Investments LP is a limited partnership organized under the laws of Texas. At all relevant times, it has engaged in securities transactions, including short sales.

13. The Defendant Anson Capital LP is a limited partnership organized under the laws of Texas. At all relevant times, it has engaged in securities transactions, including short sales.

14. The Defendant Anson Investment Master Fund LP is a limited partnership organized under the laws of Texas. At all relevant times, it has engaged in securities transactions, including short sales.

15. The Defendant AIMF GP is the general partner to Anson Investment Master Fund LP. At all relevant times, AIMF GP has engaged in securities transactions, including short sales.

16. The Defendant Anson Catalyst Master Fund LP is a limited partnership organized under the laws of Texas. At all relevant times, it has engaged in securities transactions, including short sales.

17. The Defendant ACF GP is the general partner to Anson Catalyst Master Fund LP. At all relevant times, it has engaged in securities transactions, including short shares.

18. The parties described in paragraphs 9-17 above are a family of hedge funds that carry on business as the Anson Group ("Anson"). Those funds claim to be focussed on long-short, market-neutral and opportunistic investment strategies.

19. The Defendants Moez Kassam ("Kassam") and Adam Spears ("Spears") are principals of Anson. The Defendant Sunny Puri ("Puri") is an analyst at Anson (together, the Individual Anson Defendants").

20. The Individual Anson Defendants and the entities that comprise Anson at all material times operated, acted and marketed themselves as a single entity. The Individual Anson Defendants and Anson are vicariously liable for the acts or omissions of one another. In the alternative, each of the Individual Anson Defendants and Anson acted as agent for the others.

21. The Defendant ClaritySpring Inc. ("Clarity") is a Delaware incorporated company that is based in New York. Clarity's principal is the Defendant Nathan Anderson ("Anderson").
22. Clarity and Anderson are vicariously liable for the acts or omissions of one another. In the alternative, Clarity and Anderson acted as agent for each other.
23. West Face, Boland, Anson, Kassam, Spears, Puri, Clarity and Anderson are hereinafter referred to collectively as the "Wolfpack Conspirators".
24. The Defendant Bruce Langstaff ("Langstaff") is a former employee of Canaccord Genuity.
25. The Defendant Rob Copeland ("Copeland") is a reporter with the Wall Street Journal (the "WSJ") and resides in New York, New York.
26. The Defendants Boland, Kassam, Spears, Puri, Anderson, Langstaff and Copeland are hereinafter referred to collectively as the "Individual Defendants".
27. The Defendant Kevin Baumann ("Baumann") is an individual residing in Red Deer, Alberta.
28. The Defendant Jeffrey McFarlane ("McFarlane") is an individual residing in North Carolina, in the United States of America.
29. The Defendant Darryl Levitt ("Levitt") is an individual residing in Toronto, Ontario.
30. The Defendant Richard Molyneux ("Molyneux") is an individual residing in Toronto, Ontario.

31. Baumann, McFarlane, Levitt and Molyneux are hereinafter referred to collectively as the "Guarantor Conspirators".

32. The Wolfpack Conspirators, the Guarantor Conspirators, Langstaff and Copeland are hereinafter referred to collectively as the "Conspirators".

33. John Doe 1-10 are parties that participated in the Conspiracy (defined *infra*) and whose identities are presently unknown to the Plaintiffs. The Plaintiffs will substitute the actual names of these parties after they are discovered.

(C) WOLFPACK CONSPIRATORS TARGET CALLIDUS FOR A SHORT-SELLING STRATEGY

34. Short-selling is an investment strategy whereby an investor borrows shares in a publicly traded corporation and then sells the borrowed shares to third parties. A short sale strategy anticipates that the shares will decline in value, at which point the investor will buy back shares at the lower price and return them to the party from which it originally borrowed shares. Selling borrowed shares in this fashion is known as "selling short". This activity may also be undertaken on what is known as a "naked short" basis, in which a party bets that the stock will go down in price without actually borrowing the stock or finding out if there is available stock to borrow in order to short it. Without an inventory of stocks to borrow, naked shorting can leave a stock open to market manipulation.

35. If the shares ultimately decline in value as anticipated, the difference between the higher price at which the investor sold the shares and the lower price at which the investor bought them back represents a profit to the short-selling investor.

36. If, instead of declining in value as anticipated by the investor, the shares appreciate in value, then the short-selling investor loses money on the investment. At some point, in order to cap its losses, the investor will buy back the shares at a higher price and return them to the lender. Because, in theory, the potential price of any stock is unlimited, the potential loss on a short-selling strategy is infinite.

37. The acts of the Defendants described herein amount to an unlawful conspiracy in that, at some point prior to the publication of the Article (defined *infra*) on August 9, 2017, the Defendants, with or without the John Doe Defendants: i) maliciously and intentionally or otherwise, entered into an agreement to injure the Plaintiffs or, alternatively, the predominant purpose of their acts as a whole was to cause injury to the Plaintiffs; ii) the Defendants used unlawful means – specifically, acts or a combination of acts that amount in law to actionable defamation, injurious falsehood, breaches of subsections 126.1 and 126.2 of the *Securities Act* and related regulations, including, but not limited to National Instrument 81-102 and unjust enrichment (each set out more specifically below) – with the knowledge that their actions were directly aimed at the Plaintiffs for the purpose of causing injury to the Plaintiffs; iii) caused the stock price of Callidus to drop; and (iv) in fact caused the Plaintiffs to suffer damages as a result of their conduct.

(D) GUARANTORS COORDINATE EFFORTS TO HARM CALLIDUS AND CATALYST

38. Several of the parties that received loans from Callidus were required to have their principals execute personal guarantees as a term and condition of the loan. When several of the borrowers subsequently defaulted on their loans, Callidus took steps to enforce the personal guarantees.

39. In particular, Callidus commenced actions to enforce personal guarantees against the following persons (together, the “Guarantors”):

- (a) Baumann in respect of a loan to Alken Basin Drilling Ltd.;
- (b) Andrew Levy (“Levy”) and Richard Jaross (“Jaross”) in respect of a loan to Esco Marine;
- (c) Levitt in respect of a loan to Fortress Resources;
- (d) Gary Smith (“Smith”) in respect of a loan to Fortress Resources;
- (e) Molyneux in respect of a loan to Fortress Resources; and
- (f) McFarlane in respect of a loan to Exchange Technology Group LLC.

(the “Guarantee Actions”)

40. In or around mid-2015, the Guarantors, and especially Baumann and Levy, started contacting each other to discuss and coordinate their responses to the Guarantee Actions.

41. Baumann also offered some of the Guarantors, including Levy and Jaross, substantial funding to fight the Guarantee Actions. The funding offered by Baumann was not, in fact, coming from Baumann himself, but from the Wolfpack Conspirators.

42. The Guarantors started to collectively discuss coordinating their defences to the Guarantee Actions and to do so in substantially the same fashion and with defences worded in substantially the same way.

43. In 2016, the Guarantors, except for Baumann, met in Albany, New York. During this meeting, the Guarantors discussed commencing a “RICO” action against Callidus. The Guarantors decided instead to defend the Guarantee Actions on the spurious basis of “fraudulent inducement” (or its equivalent) and to file specious counterclaims against Callidus.

44. The Guarantors thought that by defending each of the Guarantee Actions in a coordinated manner, they would have an opportunity to make it difficult for Callidus and Catalyst to succeed or embarrass Callidus and Catalyst with allegations of “fraudulent inducement” or its equivalent. The Guarantors also believed their coordinated attacks would force Callidus and Catalyst into discussing some alternative resolution.

45. The plea of fraudulent inducement is a defence typically seen in the United States pursuant to which a borrower will claim that it was induced to change its economic position in return for a promise by the lender that it will do something that the lender has no actual intention to do.

46. Such a plea was made by Smith, Levy and Jaross in connection with the Guarantee Actions against them in the United States courts. Smith was unsuccessful and his subsequent appeal was withdrawn in settlement of his case by payment of US\$10,000 to Callidus. Levy and Jaross were unsuccessful in all of the defences they asserted in the proceeding against them with the exception that the judge hearing the summary proceeding ordered a factual hearing into the fraudulent inducement issue. Before this happened, Levy and Jaross settled with Callidus and they acknowledged in the settlement that they would likely not have succeeded in their remaining plea of fraudulent inducement.

47. Similarly, Levitt and Molyneux made an exaggerated claim for \$150,000,000 against Callidus, essentially on the basis of purported fraud. When confronted with the fact that they had no such claim, they reduced the damages being sought from \$150,000,000 to \$1,000,000.

48. Baumann has made similar claims implying fraud against Callidus.

49. The actions of the Guarantors demonstrate a significant degree of coordination of their activities with a view to causing economic harm to Callidus and Catalyst.

50. The Guarantors that were primarily responsible for the coordination efforts were Levitt and to a lesser, but still important, degree, Baumann and McFarlane. While Levitt served as the overall “puppet master” of the Guarantors, Baumann also reached out to the other Guarantors and, as noted above, made the offer to fund the Levy and Jaross litigation in the amount of at least US\$250,000.

51. Catalyst and Callidus allege that funding did occur to support the Guarantors in the Guarantee Actions through several undisclosed “angels”, including the Wolfpack Conspirators. In many cases, the funders sought to keep their involvement secret through the use of non-disclosure agreements.

52. In addition to these coordinated activities, Levitt created an alter ego on Twitter known as “William Struth @Glasgow Skeptic”. William Struth was a former manager of the Glasgow Rangers football club who passed away in 1956. His image appears on the Twitter feed created by Levitt in order to mask his identity.

53. Through this alter ego, Levitt published false and defamatory statements intended to impugn Callidus and Catalyst. Essentially all of the tweets made through these aliases by Levitt are about Callidus and Catalyst and indicate a high degree of information that is not generally available to the public.

54. The use of an alias to publish false and defamatory statements about a target company is a frequent tool used by short sellers and other miscreants seeking to spread false news and manipulate market participants or other events.

55. Among the initial followers of the “William Struth @Glasgow Skeptic” Twitter feed were Brandon Moyse, a former employee of Catalyst and the subject of litigation with Catalyst, Anderson and Spears. Subsequent followers included McFarlane and Baumann.

(E) THE WOLFPACK CONSPIRES TO HARM CALLIDUS AND CATALYST

56. In or about late 2015, West Face retained Bruce Livesey (“Livesey”), an investigative journalist, to write an article regarding Catalyst’s principal, Newton Glassman, and Callidus/Catalyst. West Face intended to use the article to cause damage to Catalyst and Callidus and to launch a short attack.

57. During the course of Livesey’s “investigation”, he spoke to several of the Guarantors and learned that the Guarantors were coordinating their activities in response to the Guarantee Actions.

58. In or about late 2016, after learning of the Guarantor’s coordination from Livesey, West Face contacted the Guarantors to induce their participation in a wave of short attacks against Callidus.

59. Around the same time, West Face also encouraged another fund, Anson, to support its planned short attack. West Face disclosed to Anson the identity of the Guarantors and its knowledge of coordination between the Guarantors.

60. West Face also contacted Clarity, a firm that specializes in providing information to hedge funds, wealth managers and others in the financial services industry, and encouraged it to participate in the upcoming wave of short attacks against Callidus.

61. In or about December 2016, the Wolfpack Conspirators and the Guarantor Conspirators entered into a conspiracy with the intention to cause economic harm to Callidus and Catalyst (the "Conspiracy").

62. For the Wolfpack Conspirators, the Conspiracy presented an opportunity to continue their short attacks against Callidus, which would allow them to make risk-free profits and, in the process, damage Catalyst and Callidus.

63. For the Guarantor Conspirators, the Conspiracy presented an opportunity to cause serious economic harm to Callidus and Catalyst through trying to frustrate the enforcement of substantial personal guarantees against each of them. Additionally, the Wolfpack Conspirators and others, the identity of whom the Plaintiffs are currently unaware, offered to (and did) fund the Guarantors' defences in the Guarantee Actions.

64. The Wolfpack Conspirators and Guarantor Conspirators agreed that, in furtherance of the Conspiracy, they would execute the following plan of action: first, they spread false information through the Bay Street rumour mill. Second, certain of the Guarantor Conspirators filed false "whistleblower" complaints against Callidus through the Ontario Securities Commission ("OSC") to "confirm" the rumours. Third, once the false whistleblower complaints were filed, the Conspirators worked together to leak the allegations contained in the complaints to the media in order to generate media interest. Fourth, the Conspirators, either directly or indirectly, took short positions in Callidus Shares. Fifth, the Conspirators timed a media report about the complaints to be released near the end of a trading day, which caused the price of Callidus Shares to rapidly decline. Finally, the Conspirators closed out their naked or other short positions at a substantial profit, all at the expense of Callidus' market value and its shareholders.

65. The Conspiracy required very sophisticated coordination and perfect timing under the hand of the Wolfpack Conspirators. This pattern has been honed through repetition in other situations.

66. The Conspirators took steps to hide details of the Conspiracy in order to avoid detection and make it difficult to learn about the Conspiracy after the harm was done to the Plaintiffs. In particular, some of the Conspirators compelled at least some of the Guarantors to sign non-disclosure agreements to prevent them from disclosing information relating to the Conspiracy.

(F) CONSPIRATORS ABUSE OSC'S WHISTLEBLOWER PROGRAM

67. The first step of this very sophisticated attack required use of the OSC's "whistleblower" program. The "whistleblower" program, started in July 2016, permits persons with information about an alleged securities-related violation to report it to the OSC. The program offers anonymity to complainants and a financial reward in the event the complaint results in a penalty. The intent of the program is to encourage persons with information of alleged unfair, improper or fraudulent practices to come forward without fear of reprisal.

68. In furtherance of the Conspiracy, four of the Guarantor Conspirators, Baumann, McFarlane, Levitt (or Molyneux) and Clarity (or Anderson), agreed to file false and defamatory whistleblower complaints (the "Complaints") with the OSC relating to Callidus and Catalyst. These four "complainants" coordinated their complaints in order to portray different alleged issues with Callidus' continuous disclosure and matters relating to Catalyst to the OSC.

69. The "complainants" disclosed the Complaints, or the substance of the Complaints, to WSJ reporters in New York and Toronto. They did so knowing and intending that: (i) the Complaints were false; (ii) the fact and nature of the Complaints alleging fraud by Callidus and Catalyst would immediately be published and given widespread publicity; (iii) the publication of the existence and

substance of the Complaints (falsely) alleging fraud would injure Callidus and Catalyst; (iv) the effect of such widespread publicity would immediately cause a significant drop in the price of Callidus Shares; and (v) these steps, events and consequences would give them or their co-Conspirators an opportunity to engage in profitable short selling of Callidus Shares, all which was in furtherance of the Conspiracy.

70. Catalyst pleads and the fact is that the Complaints, which were filed in or around late 2016 and early 2017, also falsely alleged that Callidus and Catalyst were in the same line of business, which created a conflict of interest. In addition, the Complaints falsely alleged that Callidus and Catalyst had engaged in illegal accounting practices with respect to loans that related to the Guarantors.

71. The Complaints were defamatory. They falsely and maliciously state or imply that:

- (i) Callidus misled its shareholders;
- (ii) Callidus and Catalyst conduct business for nefarious purposes and do not have integrity in their business dealings; and
- (iii) Callidus and Catalyst are not reputable and do not conduct business in an ethical manner.

72. The sole motivation for filing the Complaints was in furtherance of the Conspiracy.

73. The intention of the Complaints was to enable the Conspirators to spread rumours within the financial industry that Callidus and Catalyst were the subject of *bona fide* OSC whistleblower complaints and subject to “investigations” by the OSC and the Toronto Police in order to undermine the public confidence in both firms. They were designed to feed the Bay Street rumour mill.

74. In fact, as pleaded herein, the Complaints were not *bona fide*. Rather, the Complaints were defamatory and part of the Conspiracy to harm Callidus and Catalyst and to enable the Conspirators to profit by an illegal and manipulative “short and distort” campaign against the Callidus Shares.

(G) CONSPIRATORS ENDEAVOUR TO PUBLISH EXISTENCE OF THE COMPLAINTS AND OTHER ARTICLES CRITICAL OF CALLIDUS AND CATALYST

75. The Wolfpack Conspirators and the Guarantor Conspirators undertook the initial steps of contacting journalists in an effort to leak the existence of the Complaints and other false allegations about Callidus and Catalyst.

76. Initially, the Wolfpack Conspirators and the Guarantor Conspirators engaged Livesey, who had a prior relationship with West Face, to write a negative story targeting Callidus, Catalyst and their principals. The Wolfpack Conspirators agreed to compensate Livesey for his drafting a negative story regarding Callidus, Catalyst and their principals.

77. Livesey drafted a story based on information fed to him by one or more of the Conspirators. The information that was provided to Livesey included information that formed the basis for the Complaints.

78. In furtherance of the Conspiracy, the Wolfpack Conspirators worked with Livesey to contact two different news outlets -- Canadian Business Magazine and the Globe and Mail newspaper -- with the goal of convincing these organizations to print Livesey’s freelance negative story about Callidus, Catalyst and their principals. However, these outlets chose not to publish the Livesey freelance story.

79. Having been frustrated by the failure of their first attempt, the Conspirators then sought to create another “story” that Callidus was under “investigation” by the authorities based on the submission of the false Complaints. In order to interest news outlets with this “story”, they disclosed the substance of the Complaints. The Conspirators intended to create the appearance of a credible news story about alleged nefarious practices at Callidus and Catalyst.

80. Callidus and Catalyst have positively denied any such “investigation”.

81. The Conspirators approached Reuters in 2017 with the existence of the Complaints and encouraged it to publish a negative story about Callidus and Catalyst. Reuters decided not to publish the story.

82. Prior to approaching Reuters, the Conspirators also sought to approach other reputable news organizations, whose identities are known only to them, in 2017, with the existence of the Complaints and encouraged those organizations to publish a negative story about Callidus and Catalyst. Those organizations also decided not to publish the story.

83. After being rejected by these credible media outlets, the Conspirators decided that they required a different approach to accomplish their goal of having a negative and false story published about Callidus and Catalyst.

84. As a result, the Conspirators contacted a different reporter, Copeland of the WSJ, with the intention of having Copeland write a story that would insinuate that Callidus and Catalyst were under “investigation” by both the OSC and the Toronto Police for fraud.

85. Copeland had a prior relationship with Anderson. Anderson recruited Copeland to join the Conspiracy and to write the story, which would assist the Conspirators to further the Conspiracy.

86. Copeland was directed by the Conspirators to “interview” McFarlane, who provided Copeland with details of his Complaint. Specifically, McFarlane detailed to Copeland that Callidus and Catalyst engaged in allegedly nefarious accounting practices concerning a loan that Callidus extended to XTG. McFarlane had filed a Complaint regarding these accounting practices but, in doing so, made false allegations that Callidus and Catalyst had engaged in false or illegal accounting practices with respect to XTG. Similar conversations occurred with Baumann, Molyneux, Levitt and Anderson.

87. During the course of writing the article requested by the Conspirators, Copeland contacted Callidus and Catalyst. Initially, Copeland refused to disclose to Callidus and Catalyst the subject of the article.

88. Despite Copeland’s refusal to disclose the subject of the article, Callidus and Catalyst agreed to meet with Copeland and his colleague, Jacquie McNish (“McNish”), to clarify the information and facts that Copeland indicated he would be relying on for the article.

89. The meeting between Copeland, McNish and representatives of Callidus and Catalyst took place on August 8, 2017. During that meeting, Callidus and Catalyst provided detailed information of the accounting surrounding XTG and confirmed that all of this information was available on the public record. This information flatly contradicted information that had been provided to Copeland and McNish by the Conspirators. Copeland disclosed that there had been four different whistleblower complaints to the OSC concerning Callidus and Catalyst, three of which had been filed by Guarantors.

90. During the meeting with Callidus and Catalyst, Copeland did not take any notes about any of the responses provided by Callidus and Catalyst including detailed explanations provided regarding the accounting practices surrounding XTG.

91. In fact, Callidus' and Catalyst's accounting for XTG was correct and properly disclosed on the public record.

92. Despite receiving information that refuted the basis for their story, and without making any further inquiries or conducting appropriate diligence, Copeland and McNish decided to publish it anyway. Copeland and McNish drafted the story in a manner that strongly implied and suggested that Catalyst and Callidus had engaged in fraudulent behavior concerning XTG, and that they were under "investigation" by the authorities for that and other matters. They also falsely reported that company representatives had declined to offer a comment.

93. On August 9, 2017, in furtherance of the Conspiracy, Copeland contacted the Conspirators before submitting the article for publication by the WSJ. The Conspirators encouraged Copeland to release the article near the end of the trading day on August 9. Copeland advised the Conspirators that he would do so and he did.

(H) WEST FACE, ANSON AND JOHN DOES EXECUTE WAVE OF SHORT ATTACKS

94. On or about August 9, 2017, in furtherance of the Conspiracy, the Wolfpack Conspirators and one or more of the John Doe Defendants took short positions in Callidus Shares, either directly or indirectly.

95. The Wolfpack Conspirators and one or more of the John Doe Defendants took the short positions though Langstaff and others, who are known to the Conspirators but unknown to the Plaintiffs.

96. Langstaff and others, who are known to the Conspirators but unknown to the Plaintiffs, had been previously recruited by the Wolfpack Conspirators in the Conspiracy. Langstaff, in furtherance of the Conspiracy, assisted the Wolfpack Conspirators and the John Doe Defendants to take short positions in Callidus Shares, either directly or indirectly.

97. In a typical "short", the investor borrows a company's stock from another investor, on the theory that the company's share value will decline over a period of time as described in paragraphs above.

98. On or about August 9, the Wolfpack Conspirators took "naked short" positions. This means that the Wolfpack Conspirators took a short position, betting that Callidus' stock price would decline, without actually borrowing the stock from another investor. In other words, in addition to betting that Callidus' stock price would decline, the Wolfpack Conspirators bet that they could purchase Callidus Shares to cover their short positions from the market directly without having to first borrow them.

99. This type of short is extremely risky because it requires the short selling investor to purchase the stock to cover his or her short position. The investor bets that he or she can purchase the stock for a lower price at the end of the day than it could have at the open of the market. This bet is very risky when shorting a stock that has a low trading volume, like Callidus, because the investor may not be able to purchase the stock to cover its short position, which leaves it exposed to serious losses if the share price increases. In the case of Callidus, the strategy is even more risky

because Catalyst and its related funds own more than 2/3rds of Callidus Shares and they are not made available for borrowing.

100. In addition to naked shorts, the Wolfpack Conspirators and the John Doe Defendants took other positions, the particulars of which are only known to them, to simulate a short position and profit from the damaging effects of the Article.

101. As at August 8, 2017, the average daily trading volume of Callidus's stock was (a) for the preceding 60 day period, 64,737 shares, (b) for the preceding 30 day period, 63,999 shares, and (c) for the preceding 10 day period, 48,224 shares.

102. The Wolfpack Conspirators, however, knew as a result of their activities that, at the end of the day on August 9, there would be sufficient trading volume to cover their short position.

103. At 3:29 pm EDT on August 9, 2017, Copeland's article was posted on thewallstreetjournal.com (the "Article"). The headline of the Article was "*Canadian Private-Equity Giant Accused by Whistleblowers of Fraud*". The Article was hidden behind a "pay wall", meaning that only those people who subscribe to the WSJ could see the full text of the Article. Those who were not subscribers only saw the headline and first paragraph of the Article, which read as follows:

TORONTO -- At least four individuals have filed whistleblower complaints with Canadian securities regulators alleging fraud at a multibillion-dollar investment firm and its publicly traded lending arm, according to people familiar with the matter and documents reviewed by The Wall Street Journal.

104. The headline and first paragraph of the Article contained the word "fraud" two separate times. The thrust of the Article was exactly what the Conspirators intended – it impressed upon

the general public that Callidus and Catalyst were under “investigation” by the authorities and that the “investigation” concerned fraudulent accounting transactions recorded by Callidus and Catalyst.

105. In addition to publication on thewallstreetjournal.com, the Article was published on the Dow Jones Newswire and other means that caused immediate dissemination of the Article in its entirety, including the references to Catalyst and Callidus, to other market participants.

106. Just prior to the publication of the Article and the close of market at 4:00 pm EDT, the Article had the exact effect intended by the Wolfpack Conspirators. A significant number of those persons holding Callidus Shares divested them after 3:30 pm EDT which, in turn, led to a sharp decline in Callidus’ stock price. Due to stock market rules that prohibit Callidus from being in the market after 3:30pm through its Normal Course Issuer Bid, the broker administering that bid could not provide support for the stock price. These rules were known to the Conspirators.

107. Simultaneous with the publication of the Article at 3:29 p.m. and within the span of a single minute (3:29:00 – 3:29:59), the volume spiked with 13,000 shares traded, dropping the price from \$14.92 to \$14.73 on multiple individual trades. Significantly, in the preceding 30 minutes prior to 3:29 p.m., only 3,100 shares had traded in total.

108. Over the next 30 minutes (3:30 p.m. – 4:00 p.m., the close of the trading day), over 157,400 shares traded, dropping the price by the end of the trading day to \$13.41.

109. The timing of the sell-side trading activity reflected at 3:29 p.m. was designed to cause the share price to begin to decline to exaggerate the negative pressure anticipated to be caused by the Article. The timing was part of the scheme of the Wolfpack Conspirators and the John Doe

Defendants to ensure that the share price was dramatically reduced in the last 30 minutes of the trading day and to ensure a disorderly sell-off by panicked investors.

110. During the chaotic sell-off, the Wolfpack Conspirators and the John Doe Defendants were able to purchase Callidus Shares to cover their naked (and other) short positions. Because of the decline in Callidus' share price, they were able to significantly profit. The short paid out because the share price was lower when they eventually purchased the Callidus shares than it was when they secured the naked short (and other simulated short positions) at the beginning of the trading day.

111. The Conspirators' short and distort attack was successful – beginning on August 9, 2017 through August 14, 2017, Callidus' share price declined from \$15.36 to \$10.48 (reflecting a market capitalization loss of \$246,440,000 in less than 4 trading days).

(I) ARTICLE AND COMPLAINTS ARE FALSE

112. The Article, read as a whole, and the Complaints make false and defamatory statements (the "Defamatory Words") about Callidus and Catalyst to the effect that:

- (i) Callidus and Catalyst improperly "seize" companies to whom loans have been made;
- (ii) Callidus is engaged in illegal or improper accounting in relation to Callidus's loan portfolio;
- (iii) Callidus and Catalyst are engaged in criminal or fraudulent activities in relation to Callidus's loan portfolios;
- (iv) Callidus and Catalyst are under "investigation" for fraud or other illegal activity by the OSC and/or the Toronto Police Service;

- (v) Callidus and Catalyst are treating McFarlane unfairly or unjustly by pursuing him in a Guarantee Action;
- (vi) Callidus and Catalyst improperly file "multiple lawsuits" against borrowers
- (vii) Callidus and Catalyst dealt improperly or illegally in relation to the XTG loan;
- (viii) Callidus and Catalyst caused XTG to go into insolvency proceedings shortly after it purchased a loan from a US bank;
- (ix) Callidus and Catalyst intentionally caused Callidus to be "overpaid" for the XTG investment;
- (x) Callidus and Catalyst delayed or underreported potential losses in respect of the XTG investment;
- (xi) Callidus misled its shareholders or investors;
- (xii) Callidus and Catalyst conduct business for nefarious purposes and do not have integrity in their business dealings; and
- (xiii) Callidus and Catalyst are not reputable and do not conduct business in an ethical manner.

113. The Article as a whole, and the Defamatory Words, take on additional and further defamatory meanings and implications simply from inclusion in the same Article with each other. The plain meaning of the statements taken together is that the Plaintiffs act fraudulently with misstated financial statements and nefarious business practices. This is spurious, false and damaging to the Plaintiffs' reputation and good will. The Plaintiffs intend to rely on the entirety of the Defamatory Words in support of this Action.

(J) LIABILITY AND DAMAGES RELATED TO THE SHORT ATTACKS

Breaches of the *Securities Act*

114. The Defendants' unlawful short attack was intended to, and did, drive down the price of Callidus Shares to artificially low levels. Although the full details of the Defendants' conduct in this regard are known only to them, such conduct includes, without limitation:

- (a) Providing tip-offs and previews to selected investors of the Defendants' intention to disseminate false negative information into the market concerning Callidus, and of the planned timing of such dissemination;
- (b) The concerted accumulation of open short positions in advance of the publication of the Article so as to take advantage of market price declines when the Article was published;
- (c) Encouraging selected investors to do the same;
- (d) The Defendants' participation in and preparation of the Article with its false and misleading negative content concerning Callidus;
- (e) The Defendants' efforts to ensure publication of the Article; and
- (f) The Defendants' actions after the Article was published to continue the downward pressure on the price of Callidus Shares.

115. By participating in the short attack, each Defendant, directly or indirectly, engaged or participated in a course of conduct relating to the Callidus Shares that they knew and intended, or reasonably ought to have known, would result in or contribute to an artificially low price for the Callidus Shares, in violation of section 126.1 of the *Securities Act*.

116. Additionally, each Defendant, directly or indirectly, made a statement or statements that they knew or reasonably ought to have known was misleading or untrue, or that failed to state a fact that was necessary to make the statement not misleading, and that would reasonably be

expected to have a significant effect on the market price or value of the Callidus Shares, in violation of section 126.2 of the *Securities Act*.

117. The Defendants' breaches of the *Securities Act* are "unlawful acts" that, in part, form the basis of the civil conspiracy claim, as pleaded above.

Causing loss by unlawful means/ intentional interference

118. By participating in the publication of the Defamatory Words, the Defendants deceived third-party market participants into believing that Callidus and Catalyst were engaged in fraudulent activity and were subject to "investigation" by the OSC and the Toronto Police. The Defamatory Words were published to induce these market participants to sell their Callidus Shares, thereby lowering the Callidus share price for a prolonged period of time.

119. In so doing, the Defendants interfered with Callidus's and Catalyst's economic relations with its investors and caused harm to Callidus and Catalyst in the form of a lower price for the Callidus Shares.

120. In the alternative to damages to compensate Callidus and Catalyst for having caused them loss by unlawful means, the Defendants are liable to pay restitution, disgorgement or to otherwise account for any and all ill-gotten gains obtained as a result of their conduct.

Personal Liability of the Individual Defendants

121. The Individual Defendants completely dominated and controlled the corporate entities among the Defendants and caused them to engage in the tortious and unlawful conduct described above. In addition, the conduct alleged involved malice and dishonesty in which the Individual Defendants sought to use the corporate entities among the Defendants to obtain significant

personal financial benefits. As the Individual Defendants caused the corporate entities within the Defendants to direct wrongful things to be done, this is an appropriate case to pierce the corporate veil and impose personal liability on the Individual Defendants. In the alternative, the corporate entities among the Defendants acted as agents for the Individual Defendants, who ultimately profited from the unlawful conduct.

122. In addition, or in the further alternative, the defamatory and otherwise unlawful conduct that was carried out by the Individual Defendants constituted independent wrongful acts that were contrary to the best interests of the corporate entities among the Defendants. In these circumstances, they are personally liable for the damages they caused, separate and apart from the liability of the corporate entities.

Liability of the John Doe Defendants

123. John Doe Defendants 1-10 are persons or entities whose names are not known to the Plaintiffs, but who:

- (i) participated in the Conspiracy;
- (ii) were aware of the contents of the Article prior to its publication and broadcast;
- (iii) knew or ought to have known that the Article contained false and defamatory assertions about Callidus and Catalyst that would cause the market price of Callidus Shares to decline and otherwise cause damage to Callidus and Catalyst;
- (iv) decided thereby to take short positions in Callidus's Shares, and did so; and,

- (v) thereby stood to gain by covering their short positions after the Article was broadcast and the market price of Callidus's Shares had declined.

124. John Doe Defendants 1-10 are jointly and severally liable for the wrongs committed by the Defendants.

Unjust Enrichment

125. The Defendants, including the John Doe Defendants 1-10, have been unjustly enriched or otherwise benefited through their participation in the unlawful short selling attack. Specifically: i) the Defendants received a benefit in the form of profit they made as a result of the short selling scheme; ii) the benefit was at Callidus's expense, as it corresponded to a decline in Callidus's market capitalization, which constitutes an injury to Callidus; and iii) there was no juristic reason for the enrichment.

126. The Defendants are liable to the Plaintiffs as a result of their unjust enrichment and should be required to disgorge their unjust gains, including their profits from selling the shares of Callidus, and to pay over such gains to the Plaintiffs. All such unjust gains should similarly be imposed with a constructive trust, effective as of August 9, 2017, pending further order of this Court.

127. In addition to the damages claimed above, as a result of the Defendants' conduct, the Plaintiffs have suffered, and continue to suffer, injury to their character and good reputation, which has further resulted in great embarrassment, loss of profits and loss of opportunity. The Plaintiffs are entitled to damages for reputational harm, disruption of their business, services and affairs, its loss of corporate opportunities, costs of investigating and correcting the false and defamatory statements, and/ or any other matter initiated resulting from the false and defamatory information, and other consequential damages resulting from the Defendants' scheme and market manipulation.

Punitive Damages

128. The Plaintiffs claim that an award of punitive damages is appropriate, having regard to the high-handed, wilful, wanton, reckless, contemptuous and contumelious conduct of the Defendants. Accordingly, the Defendants are liable, on a joint and several basis, to the Plaintiffs for punitive damages.

129. The Plaintiffs are entitled to damages equal to the cost of the "investigation" of the Defendants' misconduct undertaken by Callidus and Catalyst which resulted in sworn statements, discovery of emails and other facts and evidence which form the basis on which this Action is based.

(K) SERVICE EX JURIS

130. The Defendants' actions include torts committed in Ontario. At all material times, the Defendants carried on business in Ontario.

131. The Plaintiffs plead and rely upon Rule 17.02 (g) and (p) of the *Rules of Civil Procedure*, RRO 1990, Reg. 194.

132. The Plaintiffs propose that this action be tried at Toronto.

November 7, 2017

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Lawyers for the Plaintiffs

THE CATALYST CAPITAL GROUP INC. et al.
Plaintiffs

-and- WEST FACE CAPITAL INC. et al.
Defendants

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF CLAIM

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Lawyers for the Plaintiffs

This is **Exhibit "2"** referred to in the Affidavit of Karina McIntosh, sworn January 18, 2018



Commissioner for Taking Affidavits

JENNIFER P. SAVILLE

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

(Court Seal)

**THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL
CORPORATION**

Plaintiffs

and

**DOW JONES AND COMPANY, ROB COPELAND, JACQUIE MCNISH and
JEFFREY MCFARLANE**

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff.
The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date November 7, 2017

Issued by


Local Registrar

Address of Superior Court of Justice
court office: 393 University Avenue, 10th Floor
Toronto ON M5G 1E6

TO: Joseph Weissman
Counsel
1211 Avenue of the Americas
New York, NY
10036

Lawyer for the Defendants, Dow Jones and Company,
Rob Copeland and Jacquie McNish

AND TO: Jeffrey McFarlane
220 Dominion Drive
Suite B
Morrisville, NC
27560

CLAIM

1. The Plaintiffs claim against the Defendants, on a joint and several basis:
 - (a) General damages in the amount of \$300 million for defamation, conspiracy, and, in the alternative, false light publication of the Plaintiffs in the public eye;
 - (b) Special damages in such amounts as to be particularized before trial for the same causes of action as set out in (a);
 - (c) A declaration that the Defendants defamed the Plaintiffs;
 - (d) In the alternative, a declaration that the Defendants caused, contributed and/or are legally responsible for publicity of the Plaintiffs in a false light in the public eye;
 - (e) An injunction restraining the Defendants from continuing to make or publish, directly or indirectly, any of the defamatory and false light statements, articles, and broadcasts;
 - (f) prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - (g) postjudgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - (h) the costs of this proceeding, plus all applicable taxes; and
 - (i) Such further and other relief as to this Honourable Court may seem just.

The Parties

2. The Plaintiff The Catalyst Capital Group Inc. ("Catalyst") is a corporation with its head office located in Toronto, Ontario. Catalyst is widely recognized as the leading firm in the field of investments in distressed and undervalued Canadian situations.
3. The Plaintiff Callidus Capital Corporation ("Callidus") is a corporation with its head office located in Toronto, Ontario. Callidus is a publicly traded asset-based lender that provides capital on a bridge basis to meet the financing requirements of companies that cannot access traditional lending sources.
4. Callidus engages in asset-based lending by lending to corporate businesses and taking security against the assessed or appraised value of working capital and an identifiable portfolio of assets, which may include accounts receivable, inventory, equipment, real estate, and other assets.
5. In April 2014, Callidus made an initial public offering ("IPO") of approximately forty per cent of its issued and outstanding shares. Prior to the IPO, Callidus was wholly owned by Catalyst. Investment funds managed by Catalyst continue to own or control approximately seventy per cent of the issued and outstanding shares of Callidus.
6. The Defendant, Dow Jones and Company ("Dow Jones"), is a corporation with its headquarters in New York, New York. Dow Jones is the owner of the newspaper publication The Wall Street Journal ("WSJ").
7. The Defendant Rob Copeland ("Copeland") is a reporter for the WSJ residing in New York, New York.

8. The Defendant Jacquie McNish (“McNish”) is a reporter for the WSJ residing in Toronto, Ontario.

9. The Defendant Jeffrey McFarlane is the former chief executive officer of a computer distributor, Xchange Technology Group (“XTG”). XTG borrowed money from Callidus and McFarlane personally guaranteed the loan.

McFarlane Provides Copeland and McNish With False and Defamatory Information

10. In or about July 2017, McFarlane contacted Copeland to discuss information that he claimed to have regarding Callidus and Catalyst’s accounting practices. Subsequently, McFarlane and Copeland discussed McFarlane’s allegations about Callidus and Catalyst’s accounting practices with respect to Callidus.

11. Copeland convinced McNish to meet with McFarlane.

12. McFarlane, Copeland and McNish agreed to meet. During this meeting, McFarlane contended that Callidus and Catalyst had engaged in false, dishonest and fraudulent accounting practices based on the following allegations:

- (a) XTG borrowed funds from Callidus in late 2012;
- (b) In 2013, after XTG entered insolvency, Callidus purchased it for about \$34 million;
- (c) After Callidus’ IPO, Catalyst agreed to cover future losses on Callidus’ loans, including its loan to XTG;
- (d) In September 2015, Callidus recorded the XTG loan as an asset for sale at \$66.9 million in a quarterly earnings report;

- (e) In March 2016, Catalyst transferred C\$101 million to Callidus for XTG which it declared was "an amount equal to the total outstanding principal plus accrued and unpaid interest";
- (f) In December 2016, Catalyst informed its investors that the investment in XTG was worth a fraction of what it had paid that March and declared losses in two of its funds as a result;
- (g) McFarlane disclosed that he had filed a whistleblower complaint against Callidus and Catalyst alleging fraudulent accounting practices and other improprieties with the Ontario Securities Commission ("OSC");
- (h) McFarlane claimed that his complaint to the OSC contained allegations that Catalyst overpaid Callidus to acquire the XTG investment and delayed and underreported the losses on the same investment; and
- (i) McFarlane disclosed that three other parties had filed whistleblower complaints which included allegations of fraud against Callidus and Catalyst with the OSC

(together, the "McFarlane Statements").

13. McFarlane represented to Copeland and McNish that the McFarlane Statements were true. However, the McFarlane Statements were false, distorted and/or misrepresentative of the truth and were made in order to entice Copeland and McNish to author a negative article about Callidus and Catalyst.

14. McFarlane made the McFarlane Statements to Copeland and McNish with the express intent to cause harm and injury to Callidus and Catalyst. McFarlane was motivated by an animus toward Callidus and Catalyst as a result of ongoing litigation between he and Callidus concerning his personal guarantee of XTG's loan from Callidus. In addition, McFarlane's actions were in furtherance of a broader conspiracy to cause Callidus and Catalyst harm.

15. McFarlane knew that the McFarlane Statements were false and defamatory of Callidus and Catalyst, however, he caused Copeland and McNish to publish a story based on the McFarlane Statements.

16. Following the meeting with McFarlane, Copeland and McNish resolved to and did author a story based on the McFarlane Statements.

17. Neither Copeland nor McNish performed any material research or due diligence to question or confirm the McFarlane Statements.

18. In an effort to give the appearance of balanced reporting, Copeland and McNish requested and were granted a meeting with Callidus and Catalyst's representatives to discuss their article.

Meeting between Callidus, Catalyst, Copeland and McNish

19. On August 8, 2017, Copeland and McNish, under the guise of responsible and ethical journalism, met with Callidus' and Catalyst's representatives (the "August 8 Meeting").

20. Prior to the meeting, Callidus and Catalyst requested that Copeland and McNish provide the materials they claimed to be relying on to allege that Callidus and Catalyst had been the subject of a number of whistleblower complaints to "authorities", including the OSC and the Toronto Police Service, and to provide details of the allegations from their sources.

21. Copeland and McNish refused to provide any material to Callidus or Catalyst in advance of the August 8 Meeting.

22. During the meeting, Callidus' and Catalyst's representatives presented full and complete disclosure to Copeland and McNish of the specific facts relevant to XTG and its loan with Callidus.

The disclosure included the following facts:

- (a) Copeland and McNish were incorrectly comparing information from Callidus' financial statements about XTG, namely its "Net Carrying Value number" and its "Gross Loan Number", as reported in various financial statements, to suggest that Callidus was underreporting potential losses on loans to XTG.
- (b) The correct information explains that the "Gross Loan Number" was a proper accounting for XTG's loan in accordance with its contractual obligations to Callidus;
- (c) Catalyst, upon acquiring XTG, under normal course accounting practices, had been required to write down the asset to its appropriate carrying value in line with the relevant adjustments;
- (d) The accounting treatment reflected in the books of Callidus and Catalyst was required by and in accordance with IFRS;
- (e) These normal course adjustments had already been recorded in Callidus' and XTG's audited financial statements; and

- (f) In these circumstances, there was no legitimacy to any allegations that Callidus' or Catalyst had engaged in any improper, let alone fraudulent, accounting practices in connection with XTG.

23. The information provided to Copeland and McNish during the August 8 Meeting flatly contradicted the false representations made to them by McFarlane and the basis for the McFarlane Statements.

24. Copeland and McNish led Catalyst and Callidus to believe that they would use the information supplied during the August 8 Meeting to undertake basic due diligence on the claims on which they intended to report.

25. Catalyst and Callidus believed that Copeland and McNish would fairly, accurately and responsibly report the facts and circumstances of Callidus' accounting for its loan to XTG.

Copeland and McNish Submit Article for Publishing

26. Copeland and McNish deliberately omitted the information provided to them by Callidus and Catalyst during the August 8 Meeting from their articles. Instead, Copeland and McNish intentionally and falsely drafted their articles in reliance on the information McFarlane provided to them and nothing more. This bad faith misconduct was aggravated by the fact that Copeland and McNish also falsely reported that Callidus and Catalyst would not comment on Copeland and McNish's story.

27. Copeland and McNish authored an article entitled "*Canadian Private-Equity Giant Accused by Whistleblowers of Fraud*" (the "First Article").

28. Copeland and McNish did so knowing, being wilfully blind to, or reckless to, the fact that:

- (a) The statements they intended to and did publish regarding Callidus and Catalyst were false, inaccurate, misleading, and had been fabricated, and would not stand up to basic due diligence; and
 - (b) Copeland and McNish had access to information in the public record and arising from the August 8 Meeting that contradicted the McFarlane Statements and the defamatory language used in the First Article.
29. Copeland and McNish submitted the First Article for publishing on or about August 9, 2017.
30. Dow Jones published the First Article on the WSJ's website, www.thewallstreetjournal.com. Dow Jones did so knowing, being wilfully blind to, or reckless to, the fact that the statements in the First Article regarding Callidus and Catalyst were false, inaccurate, misleading, and had been fabricated, and would not stand up to basic due diligence.
31. The following false and defamatory words, were published in the First Article (collectively the "Defamatory Words"):

Canadian Private-Equity Giant Accused by Whistleblowers of Fraud

At least four individuals have filed whistleblower complaints with Canadian securities regulators alleging fraud at a multibillion-dollar investment firm and its publicly traded lending arm, according to people familiar with the matter and documents reviewed by The Wall Street Journal.

Catalyst Capital Group Inc., one of Canada's largest private-equity firms, is accused in the complaints of artificially inflating the value of some of its assets and deceiving borrowers about the terms of loans it made. The complaints have prompted officials at the Ontario Securities Commission, the country's leading securities regulator, to make inquiries and question people familiar with Catalyst, according to the people and documents.

A unit of the Toronto Police Service that specializes in financial crimes has separately begun its own inquiries, a department spokeswoman said.

[...]

Some but not all of the filers of the Catalyst whistleblower complaints have worked at companies that borrowed money from Mr. Glassman's firms, and later had their businesses seized, said people familiar with the matter. Some are involved in litigation with Catalyst, the people said. Some of the complaints involve a series of loans to a small technology distributor, while others focus on other investments and the firm's accounting.

[...]

Mr. Glassman is also chief executive of Callidus Capital Corp., a so-called alternative lender listed on the Toronto Stock Exchange. Callidus's lending practices are also a subject of the whistleblower complaints, according to the people and documents.

[...]

Catalyst funds own a majority of Callidus's public shares and some senior executives work concurrently at both firms.

[...]

His companies sometimes file multiple lawsuits against borrowers believed to have violated the terms of their loans.

One of those borrowers is Jeff McFarlane.

Mr. McFarlane is the former chief executive of computer distributor Xchange Technology Group, known as XTG. He said his company began borrowing from Callidus in late 2012 after the lender purchased its \$11.6 million loan from a U.S. bank.

Within a year, Xchange was in insolvency proceedings. Callidus purchased the company for about \$34 million, according to court documents.

When Callidus went public in 2014, Catalyst, its majority shareholder, agreed to cover future losses on loans including Xchange.

In September 2015, Callidus recorded the Xchange investment as an asset for sale at C\$66.9 million in a quarterly earnings report.

Then in March 2016, Catalyst transferred C\$101 million to Callidus for Xchange, "an amount equal to the total outstanding principal plus accrued and unpaid interest," filings show.

In December 2016, Catalyst told its investors that the Xchange stake was only worth a fraction of what it had paid that March, triggering losses on two of its funds, according to one of the whistleblower complaints and documents reviewed by the Journal.

Mr. McFarlane confirmed he filed one of the whistleblower complaints. His complaint, and one other, alleges that Catalyst funds overpaid Callidus to acquire the Xchange investment, and delayed and underreported potential losses. "I have serious concerns about the integrity of Callidus's accounting around XTG," Mr. McFarlane said.

Last month, the Court of Appeal for Ontario found Mr. McFarlane responsible for a personal guarantee on Xchange's debts that was far less than Callidus was seeking in a civil suit.

Mr. Glassman's companies have also sued or counter sued government agencies and former employees for damages in relation to alleged business breaches and misconduct.

Callidus in February sued a former employee and alleged he was responsible for "artificially inflating" the financial performance of some of its investments, including Xchange. The employee responded in a court filing denying that, and said Callidus made the claim to deflect attention from "multiple complaints and regulatory investigations." Litigation is ongoing.

As part of its quarterly earnings, Callidus in May disclosed that its accounting practices were under review from the OSC. Mr. Glassman told analysts at that time that the review was "nothing extraordinary." He added, "If there was a significant issue with the Commission, I'm fairly certain the Commission would force us to disclose it."

32. The First Article also fails to report the details of the four alleged "whistleblower" complaints, with the exception of certain allegations concerning Callidus and Catalyst's accounting of Callidus's loan to XTG.

33. In addition to being defamatory, the statements in the First Article are intentionally and with malice presented in a false light by Copeland, McNish and Dow Jones to indicate that Catalyst and Callidus acted in a menacing, illegal and immoral manner.

34. The ordinary meaning of the words or innuendos published in the First Article would lead a reasonable person to conclude that Catalyst and Callidus:

- (a) improperly “seize” companies to whom loans have been made;
- (b) are engaged in illegal or improper accounting in relation to Callidus’s loan portfolio;
- (c) are engaged in criminal or fraudulent activities in relation to Callidus’s loan portfolios;
- (d) are under investigation for fraud or other illegal activity by the OSC and/or the Toronto Police Service;
- (e) are treating McFarlane unfairly or unjustly;
- (f) improperly file “multiple lawsuits” against borrowers;
- (g) dealt improperly or illegally in relation to the XTG loan;
- (h) caused XTG to go into insolvency proceedings shortly after it purchased a loan from a US bank;
- (i) intentionally caused Callidus to be “overpaid” for the XTG investment;
- (j) delayed or underreported potential losses;
- (k) misled their shareholders or investors;

(l) conduct business for nefarious purposes and do not have integrity in their business dealings; and

(m) are not reputable and do not conduct business in an ethical manner.

35. The First Article remains on the WSJ website where it was initially posted.

Copeland Tweets Defamatory Words

36. On August 9, 2017 at 3:40 p.m. EDT, Copeland further disseminated the First Article using his Twitter account under the handle “@realrobcopeland”. Copeland tweeted a link to the First Article and wrote in a tweet that “‘Goldman Sachs of Canada’ is accused of fraud. Exclusive w/ @jacquiemcnish” (the “First Copeland Tweet”).

37. Less than an hour later, Copeland sent a second tweet which again included a link to the First Article and indicated that “Shares fall 21% for Callidus Capital, majority owned by PE giant Catalyst Capital, after @WSJ reports alleged fraud” (the “Second Copeland Tweet”).

38. On August 11, 2017, in an effort to further disseminate the First Article and the Defamatory Words, Copeland tweeted a link to another WSJ story regarding Callidus and Catalyst (which links to the First Article) and tweeted that “Lender Callidus, which we reported is accused by whistleblowers of fraud, reports unexpected loss” (the “Third Copeland Tweet”).

39. Copeland authored the First Copeland Tweet, Second Copeland Tweet and Third Copeland Tweet with the express purpose of disseminating the First Article as well as the facts, information and innuendo that he knew or ought to have known were defamatory and which caused harm to Callidus and Catalyst.

WSJ Re-publishes Defamatory Words

40. On or about August 10, 2017, Dow Jones published in the print editions of its newspaper, the WSJ, an article headlined “*Top Buyout Firm Scrutinized on Loans*” (the “Second Article”).

41. Copeland and McNish also authored the Second Article. They did so knowing, being wilfully blind to, or reckless to, the fact that:

(a) The statements they intended to and did publish regarding Callidus and Catalyst were false, inaccurate, misleading, and had been fabricated, and would not stand up to basic due diligence; and

(b) Copeland and McNish had access to information in the public record and arising from the August 8 Meeting that contradicted the McFarlane Statements and the defamatory language used in the Second Article.

42. Dow Jones published the Second Article knowing, being wilfully blind to, or reckless to, the fact that the statements in the Second Article regarding Callidus and Catalyst were false, inaccurate, misleading, and had been fabricated, and would not stand up to basic due diligence.

43. The following false and defamatory words were published in the Second Article (collectively, the “Defamatory Words”):

At least four individuals have filed whistleblower complaints with Canadian securities regulators alleging fraud at a multibillion- dollar investment firm and its publicly traded lending arm, according to people familiar with the matter and documents reviewed by The Wall Street Journal.

Catalyst Capital Group Inc., one of Canada’s largest private- equity firms, is accused in the complaints of artificially inflating the value of some of its assets and deceiving borrowers about the terms of loans it made. The complaints have prompted officials at the Ontario Securities

Commission, the country's leading securities regulator, to make inquiries and question people familiar with Catalyst, according to the people and documents.

A unit of the Toronto Police Service that specializes in financial crimes has separately begun its own inquiries, a department spokeswoman said.

[...]

Some but not all of the filers of the Catalyst whistleblower complaints have worked at companies that borrowed money from Mr. Glassman's firms, and later had their businesses seized, said people familiar with the matter. Some are involved in litigation with Catalyst, the people said. Some of the complaints involve a series of loans to a small technology distributor, while others focus on other investments and the firm's accounting.

[...]

Mr. Glassman is also chief executive of Callidus, the alternative lender listed on the Toronto Stock Exchange. Callidus's lending practices are also a subject of the whistleblower complaints, according to the people and documents.

Catalyst funds own a majority of Callidus's public shares and some senior executives work concurrently at both firms.

[...]

His companies sometimes file multiple lawsuits against borrowers believed to have violated the terms of their loans.

One of those borrowers is Jeff McFarlane. Mr. McFarlane is the former chief executive of computer distributor Xchange Technology Group, known as XTG. He said his company began borrowing from Callidus in late 2012 after the lender purchased its \$11.6 million loan from a U.S. bank.

Within a year, Xchange was in insolvency proceedings. Callidus purchased the company for about \$34 million, according to court documents.

When Callidus went public in 2014, Catalyst, its majority shareholder, agreed to cover future losses on loans including Xchange.

In September 2015, Callidus recorded the Xchange investment as an asset for sale at C\$66.9 million in a quarterly earnings report. Then in March 2016, Catalyst transferred C\$101 million to Callidus for Xchange, "an amount equal to the total outstanding principal plus accrued and unpaid interest," filings show.

In December 2016, Catalyst told its investors that the Xchange stake was only worth a fraction of what it had paid that March, triggering losses on two of its funds, according to one of the whistleblower complaints and documents reviewed by the Journal.

Mr. McFarlane confirmed he filed one of the whistleblower complaints. His complaint, and one other, alleges that Catalyst funds overpaid Callidus to acquire the Xchange investment, and delayed and underreported potential losses. "I have serious concerns about the integrity of Callidus's accounting around XTG," Mr. McFarlane said.

Last month, the Court of Appeal for Ontario found Mr. McFarlane responsible for a personal guarantee on Xchange's debts that was far less than Callidus was seeking in a civil suit.

[...]

Mr. Glassman's companies have also sued or counter sued government agencies and former employees for damages in relation to alleged business breaches and misconduct.

Callidus in February sued a former employee and alleged he was responsible for "artificially inflating" the financial performance of some of its investments, including Xchange. The employee responded in a court filing denying that, and said Callidus made the claim to deflect attention from "multiple complaints and regulatory investigations." Litigation is ongoing.

As part of its quarterly earnings, Callidus in May disclosed that its accounting practices were under review from the OSC.

44. As with the First Article, the Second Article fails to report the details of the four alleged "whistleblower" complaints, with the exception of certain allegations concerning Callidus and Catalyst's accounting of Callidus's loan to XTG.

45. In addition to being defamatory, the statements in the Second Article are intentionally and with malice presented in a false light by Copeland, McNish and Dow Jones to suggest that Catalyst and Callidus act in a menacing, illegal and immoral manner.

46. The ordinary meaning of the words or innuendos published in the Second Article would lead a reasonable person to conclude that Catalyst and Callidus:

- (a) improperly “seize” companies to whom loans have been made;
- (b) are engaged in illegal or improper accounting in relation to Callidus’s loan portfolio;
- (c) are engaged in criminal or fraudulent activities in relation to Callidus’s loan portfolios;
- (d) are under investigation for fraud or other illegal activity by the OSC and/or the Toronto Police;
- (e) are treating McFarlane unfairly or unjustly;
- (f) improperly file “multiple lawsuits” against borrowers
- (g) dealt improperly or illegally in relation to the XTG loan;
- (h) caused XTG to go into insolvency proceedings shortly after it purchased a loan from a US bank;
- (i) intentionally caused Callidus to be “overpaid” for the XTG investment;
- (j) delayed or underreported potential losses;
- (k) misled their shareholders or investors;
- (l) conduct business for nefarious purposes and do not have integrity in their business dealings; and
- (m) are not reputable and do not conduct business in an ethical manner.

47. Dow Jones altered some of the information in the Second Article, in a tacit admission that the information published in the First Article was inaccurate, misleading and defamatory.

The Plaintiffs Serve Defamation Notice

48. On or about August 22, 2017, the Plaintiffs delivered to the Defendants a notice under the *Libel and Slander Act* that a claim would be commenced if the First and Second Articles were not retracted and an apology issued.

49. The Defendants refused to retract, correct or in any way qualify the First and Second Articles.

Irresponsible Journalism

50. In publishing the First and Second Article, Dow Jones, Copeland and McNish failed to engage in responsible journalism and, by their negligence, caused damage to the Plaintiffs.

51. Dow Jones, Copeland and McNish owed a duty of care to the Plaintiffs.

52. Dow Jones, Copeland and McNish breached the duty of care they owed to the Plaintiffs in the following manner:

- (a) Dow Jones, Copeland and McNish failed to investigate or perform any due diligence with respect to Callidus' and Catalyst's accounting of the loan to XTG by reviewing publicly available information to which the Plaintiffs directed them;
- (b) Dow Jones, Copeland and McNish relied on McFarlane as a source of information without performing the necessary diligence to determine if McFarlane was a reliable, credible or truthful source of information; and

- (c) Copeland and McNish failed to conduct any due diligence in respect of any of the other allegations made to them by McFarlane or any of the underlying facts relevant to the veracity of such allegations and, in failing to do so, allowed themselves to be used as part of a broader scheme, of which McFarlane was a part, to cause harm to Catalyst and Callidus.

Plaintiffs Suffered Damages

53. By reason of the defamatory publications and the words contained therein, the Plaintiffs have been severely injured in their character, reputation, and business. The Plaintiffs continue to suffer significant damages as a result of the publication of the First and Second Article which contain the Defamatory Words and the First, Second and Third Copeland Tweets.

54. As a result of the Defendants' misconduct, including negligence and making and publishing defamatory and misleading statements, the Plaintiffs have suffered damage to their reputations.

Punitive Damages

55. The Defendants were motivated by malice when they published the Defamatory Words and republished the McFarlane Statements. Their conduct was high-handed and callous and demonstrated a total disregard for the truth.

56. As a result of the actions and conduct of the Defendants, the Plaintiffs have suffered a significant loss to their dignity and are entitled to aggravated damages.

57. As a result of the high-handed, malicious, and vindictive actions and conduct of the Defendants, the Plaintiffs are entitled to punitive damages.

58. The Plaintiffs plead and rely on the *Libel and Slander Act*, RSO 1990, c L.12.

59. The Plaintiffs plead and rely on the *Negligence Act*, RSO 1990, c N.1.

Service *Ex Juris*

60. The Defendants' actions include torts committed in Ontario.

61. Catalyst pleads reliance on Rule 17.02 (g) and (p) of the *Rules of Civil Procedure*, RRO 1990, Reg. 194.

62. The Plaintiffs request that this action be tried in Toronto.

November 7, 2017

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Lawyers for the Plaintiffs

THE CATALYST CAPITAL GROUP INC. et al.
Plaintiffs

-and-

DOW JONES AND COMPANY et al.
Defendants

Cv. 17. 586094
Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF CLAIM

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Lawyers for the Plaintiffs

This is **Exhibit “3”** referred to in the Affidavit of Karina McIntosh, sworn January 18, 2018



Commissioner for Taking Affidavits

JENNIFER P. SAVILLE

12

Court File No. CV-17-586096

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE

MR. JUSTICE GLENN A. HAINEY

)
)
)

WEDNESDAY, THE 16TH

DAY OF NOVEMBER, 2017

BETWEEN:



THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL
CORPORATION

Plaintiffs

and

WEST FACE CAPITAL INC., GREGORY BOLAND, M5V ADVISORS INC.
C.O.B. ANSON GROUP CANADA, ADMIRALTY ADVISORS LLC,
FRIGATE VENTURES LP, ANSON INVESTMENTS LP, ANSON CAPITAL
LP, ANSON INVESTMENTS MASTER FUND LP, AIMF GP, ANSON
CATALYST MASTER FUND LP, ACF GP, MOEZ KASSAM, ADAM
SPEARS, SUNNY PURI, CLARITYSPRING INC., NATHAN ANDERSON,
BRUCE LANGSTAFF, ROB COPELAND, KEVIN BAUMANN, JEFFREY
MCFARLANE, DARRYL LEVITT, RICHARD MOLYNEUX and JOHN
DOES #1-10

Defendants

ORDER

THIS MOTION, made by the Defendants, West Face Capital Inc. ("**West Face**") and Gregory Boland ("**Boland**") (collectively the "**Moving Parties**") for an Order transferring this action to the Commercial List, directing and compelling the Respondents (as defined in paragraph 4 below) to preserve evidence, and for other ancillary relief, was heard this day at 330 University Avenue, Toronto, Ontario, M5G 1R7.

ON READING the Motion Record of the Moving Parties, dated November 15, 2017, filed in support of this motion;

AND ON HEARING the submissions of the lawyers for the Moving Parties and the lawyers for the Plaintiffs and UPON BEING ADVISED that the Plaintiffs, Lax O'Sullivan Lisus Gottlieb LLP, Greenspan Humphrey Weinstein and Moore Barristers LLP consent to the relief sought, no one appearing for Black Cube (as defined in paragraph 4 below):

1. THIS COURT ORDERS that this action shall be and is hereby transferred to the Commercial List and shall be listed on the Commercial List.
2. THIS COURT ORDERS that this action shall be case managed.
3. THIS COURT ORDERS that the Respondents take immediate steps to preserve all evidence (as defined in paragraph 5 below) in their possession power or control in any way related to, arising out of, or referring to investigative activities undertaken against or involving: (a) West Face Capital Inc. and its current or former employees or agents; or (b) any of the other Defendants in this proceeding, including without limitation the investigations referred to in paragraph 129 of the Statement of Claim.
4. THIS COURT ORDERS that for the purpose of this Order, "**Respondents**" include The Catalyst Capital Group Inc. ("**Catalyst**") and Callidus Capital Corporation ("**Callidus**"), Black Cube, B.C. Strategy UK Ltd., B.C. Strategy Ltd. (collectively, "**Black Cube**") Lax O'Sullivan Lisus Gottlieb LLP, Greenspan Humphrey Weinstein, Moore Barristers LLP, as well as all of their respective partners, officers, directors, employees,

and any agents, operatives, representatives, contractors, and legal counsel of the foregoing.

5. THIS COURT ORDERS that for the purpose of this Order, "**evidence**" is construed as broadly as possible to include, without limitation, all physical and electronic documents, video or audio recordings, internet browser histories, transcripts, physical evidence, or other evidence of any nature.

6. THIS COURT ORDERS that counsel for Catalyst and Callidus shall forthwith provide this Order to the Respondents, as defined above in paragraph 3(a).

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:
NOV 20 2017

PER / PAR: C.D.



75
THE CATALYST CAPITAL GROUP INC. et al.
Plaintiffs

-and- WEST FACE CAPITAL INC. et al.
Defendants

Court File No. CV-17-586096

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO

ORDER

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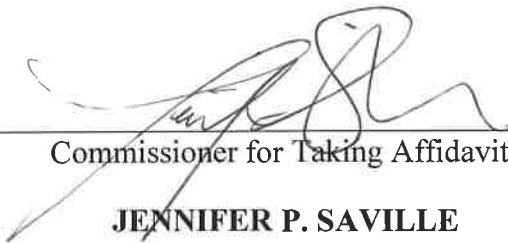
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Lawyers for the Defendants,
WEST FACE CAPITAL INC. and Gregory Boland

This is **Exhibit "4"** referred to in the Affidavit of Karina McIntosh, sworn January 18, 2018



Commissioner for Taking Affidavits

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January 12, 2018

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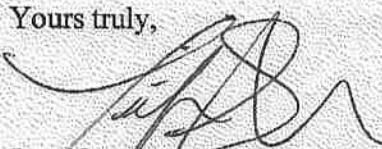
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Dear Sirs/Mesdames:

Re: Copeland et al ats Catalyst Capital Group Inc. et al
Court File No.: CV-17-586096

Enclosed please find the Demand for Particulars and Request to Inspect Documents of the Defendant, Rob Copeland, which is served upon you pursuant to the *Rules of Civil Procedure*.

Yours truly,


Jennifer P. Saville
Associate
JPS/km
Enclosure

Court File No.: CV-17-586096

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL
CORPORATION**

Plaintiffs

- and -

**WEST FACE CAPITAL INC., GREGORY BOLAND, M5V ADVISORS INC.
c.o.b. ANSON GROUP CANADA, ADMIRALTY ADVISORS LLC, FRIGATE
VENTURES LP, ANSON INVESTMENTS LP, ANSON CAPITAL LP, ANSON
INVESTMENTS MASTER FUND LP, AIMF GP, ANSON CATALYST MASTER
FUND LP, ACF GP, MOEZ KASSAM, ADAM SPEARS, SUNNY PURI,
CLARITYSPRING INC., NATHAN ANDERSON, BRUCE LANGSTAFF, ROB
COPELAND, KEVIN BAUMANN, JEFFREY MCFARLANE, DARRUL LEVITT,
RICHARD MOLYNEUX, AND JOHN DOES #1-10**

Defendants

DEMAND FOR PARTICULARS AND REQUEST TO INSPECT DOCUMENTS

The Defendant, Rob Copeland ("Copeland"), hereby demands that the Plaintiffs provide particulars of the following allegations in the Statement of Claim:

1. Particulars as to which, if any, of the allegations as against the "Individual Defendants" (as defined in paragraph 26 of the Statement of Claim to include Copeland) set out in paragraphs 37, 121, 122 of the Statement of Claim are in fact allegations as against Copeland.
2. Particulars as to which, if any, of the allegations as against the "Conspirators" (as defined in paragraph 32 of the Statement of Claim to include Copeland) set out in paragraphs 37, 64 (third, fourth, fifth and sixth sentences), 65, 66, 69(v), 73, 74, 77, 79,

81, 82, 83, 95, 96 and 111 of the Statement of Claim are in fact allegations as against Copeland.

3. With regard to Paragraph 37 of the Statement of Claim, particulars of the terms of the alleged "agreement" among the Defendants, and any date or dates (other than as alleged in paragraph 61 of the Statement of Claim) that it was entered into (i) by any of the Defendants other than Copeland, and (ii) by Copeland.

4. With regard to Paragraph 66 of the Statement of Claim, particulars:

- (a) as to how Copeland allegedly timed the media report to be released near the end of a trading day; and
- (b) of any alleged "steps" that any of the Conspirators took to hide the details of Copeland's alleged role in the Conspiracy.

5. With regard to Paragraph 69 of the Statement of Claim, particulars of

- (a) Copeland's alleged knowledge and intention that the Complaints were false;
- (b) Copeland's alleged knowledge and intention that the "Complaints alleging fraud by Callidus and Catalyst would immediately be published";
- (c) Copeland's alleged knowledge and intention that "the effect of such widespread publicity would immediately cause a significant drop in the price of Callidus shares";
- (d) who allegedly disclosed the complaints to the WSJ, and when that allegedly occurred; and

- (e) how and by whom Copeland was given "an opportunity to engage in profitable short selling of Callidus Shares".

6. Particulars as to which of the words complained of in Paragraph 71 are said to give rise to each of such alleged defamatory meanings.

7. With regard to Paragraph 74 of the Statement of Claim, particulars as to how Copeland would allegedly "profit" from the Complaints.

8. With regard to Paragraph 84 of the Statement of Claim, particulars of the date of the alleged contact with Copeland, and particulars of any alleged contact between any of the Conspirators and Copeland prior to that date or prior to that alleged contact.

9. With regard to Paragraph 85 of the Statement of Claim, particulars of

- (a) Copeland's alleged prior relationship with Anderson; and
- (b) what elements or agreements comprising the alleged Conspiracy Copeland was recruited to join.

10. With regard to Paragraph 84 of the Statement of Claim, particulars as to how Copeland was allegedly "directed" by the Conspirators to interview McFarlane.

11. With regard to Paragraph 89 of the Statement of Claim, particulars of

- (a) the alleged "detailed information of the accounting surrounding XTG" that was provided to Copeland; and

- (b) how the information provided by Callidus and Catalyst allegedly “flatly contradicted information that had been provided to Copeland and McNish by the Conspirators”.

12. With regard to Paragraph 92 of the Statement of Claim, particulars as to how the story allegedly “strongly implied and suggested that Catalyst and Callidus had engaged in fraudulent behaviour concerning XTG”.

13. With regard to Paragraph 93 of the Statement of Claim, particulars as to how the Conspirators allegedly “encouraged” Copeland to release the article near the end of the trading day on August 9.

14. With regard to each of the alleged defamatory meanings of the Article set out in Subparagraphs 112 i. to xiii. of the Statement of Claim, particulars as to which of the words in the Article are said to give rise to each of such alleged defamatory meanings.

15. Particulars as to which, if any, of the allegations as against the “Defendants” set out in paragraph 114 of the Statement of Claim are in fact allegations as against Copeland.

16. With regard to Paragraph 116 of the Statement of Claim, particulars of the statements that Copeland allegedly knew or reasonably ought to have known were misleading or untrue.

17. With regard to Paragraph 121 of the Statement of Claim, particulars as to

- (a) How Copeland allegedly sought to use the corporate entities among the Defendants to obtain “significant personal financial benefits”;

- (b) the alleged malice and dishonesty on the part of Copeland, and the material facts that the Plaintiffs are relying upon with respect thereto;
 - (c) the alleged wrongful things that Copeland directed to be done, and the material facts that the Plaintiffs are relying upon with respect thereto;
 - (d) how Copeland "dominated and controlled the corporate entities" and "caused them to engage in the tortious and unlawful conduct" described in the Statement of Claim; and
 - (e) how Copeland "ultimately profited" from the alleged unlawful conduct.
18. With regard to Paragraph 122 of the Statement of Claim, particulars as to
- (a) any "otherwise unlawful" conduct on the part of Copeland; and
 - (b) how any alleged independent wrongful acts on the part of Copeland were contrary to the best interests of any corporate entities among the Defendants.
19. With regard to Paragraph 125 of the Statement of Claim, particulars as to how Copeland was allegedly unjustly enriched.
20. With regard to Paragraph 127 of the Statement of Claim, particulars of the alleged reputational harm, disruption of business, services and affairs, loss of corporate opportunities, costs of investigating and correcting the false and defamatory statements.

The Defendant Copeland further requests inspection and production of a copy of the following documents referred to in the Statement of Claim:

1. The "full text of the Article" available to subscribers referred to in Paragraph 103 of the Statement of Claim; and
2. A copy of the Article as published in the manner referred to in Paragraph 105 of the Statement of Claim, if it or they different from the Article as referred to in Paragraph 103 of the Statement of Claim.

January 12, 2018

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Lawyers for the Defendant,
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AND TO: **KEVIN BAUMANN**

AND TO: **RICHARD MOLYNEUX**

AND TO: **AND JOHN DOES #1-10**

THE CATALYST CAPITAL GROUP INC.
et al
and
Plaintiffs

ROB COPELAND et al.
Defendants

Court File No.: CV-17-586096

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at TORONTO

DEMAND FOR PARTICULARS

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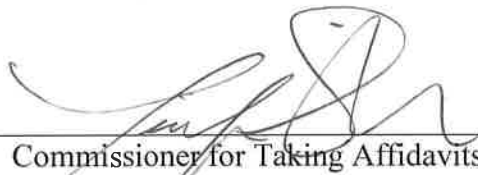
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Lawyers for the Defendant,
Rob Copeland

This is **Exhibit "5"** referred to in the Affidavit of Karina McIntosh, sworn January 18, 2018



Commissioner for Taking Affidavits

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January 12, 2018

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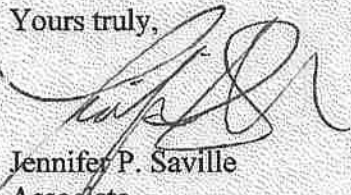
USA

Dear Sirs:

Re: Dow Jones and Company et al ats Catalyst Capital Group Inc. et al
Court File No.: CV-17-586094

Enclosed please find the Demand for Particulars and Request to Inspect Documents of the Defendants, Dow Jones and Company, Rob Copeland and Jacquie McNish, which is served upon you pursuant to the *Rules of Civil Procedure*.

Yours truly,



Jennifer P. Saville

Associate

JPS/km

Court File No.: CV-17-586094

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL
CORPORATION**

Plaintiffs

- and -

**DOW JONES AND COMPANY, ROB COPELAND, JACQUIE MCNISH and
JEFFREY MCFARLANE**

Defendants

DEMAND FOR PARTICULARS AND REQUEST TO INSPECT DOCUMENTS

The Defendants, Dow Jones and Company, Rob Copeland and Jacquie McNish hereby demand that the Plaintiffs provide particulars of the following allegations in the Statement of Claim:

1. With regard to Paragraph 13 of the Statement of Claim, particulars as to what words contained in the McFarlane Statements were "false, distorted and/or misrepresentative of the truth".
2. With regard to Paragraph 24 of the Statement of Claim, particulars as to what if any words or conduct of Copeland or McNish "led Catalyst and Callidus to believe" the matters alleged.
3. With regard to Paragraph 26 of the Statement of Claim, particulars as to what information was "deliberately omitted" from the articles.
4. Particulars as to which of the published statements referred to in Subparagraph 28(a) and Paragraph 30 and quoted in Paragraph 31 of the Statement of Claim were

allegedly false, inaccurate, misleading, had been fabricated and would not stand up to basic due diligence.

5. Particulars as to what information in the public record referred to in Subparagraph 28(b) of the Statement of Claim Copeland and McNish allegedly had access to that would contradict the McFarlane Statements.

6. Particulars of the "innuendos" referred to in the first line of Paragraph 34 of the Statement of Claim, either by reference to Subparagraphs 34 a. to m. of the Statement of Claim (if any of the meanings alleged therein are said to arise by innuendo), or otherwise.

7. With regard to each of the alleged defamatory meanings of the First Article set out in Subparagraphs 34 a, b, e, f, and g of the Statement of Claim, particulars as to which of the words complained of in Paragraph 31 of the Statement of Claim are said to give rise to each of such alleged defamatory meanings.

8. With regard to Paragraph 33 of the Statement of Claim, particulars of which statements in the First Article are allegedly intentionally and with malice presented in a false light by Copeland, McNish and Dow Jones and Company.

9. With regard to Paragraph 39 of the Statement of Claim, particulars of all "facts, information and innuendos", other than as contained in the First Article, that are complained of as being disseminated by the First Copeland Tweet, Second Copeland Tweet and Third Copeland Tweet referred to in Paragraphs 36-38 of the Statement of Claim.

10. Particulars as to which of the published statements referred to in Subparagraph 41(a) and Paragraph 42 and quoted in Paragraph 43 of the Statement of Claim were allegedly false, inaccurate, misleading, had been fabricated and would not stand up to basic due diligence.
11. Particulars as to what information in the public record referred to in Subparagraph 41(b) of the Statement of Claim Copeland and McNish allegedly had access to that would contradict the McFarlane Statements.
12. With regard to each of the alleged defamatory meanings of the Second Article set out in Subparagraphs 46 a, b, e, f, and g of the Statement of Claim, particulars as to which of the words complained of in Paragraph 43 of the Statement of Claim are said to give rise to each of such alleged defamatory meanings.
13. With regard to Paragraph 45 of the Statement of Claim, particulars of which statements in the Second Article are allegedly intentionally and with malice presented in a false light by Copeland, McNish and Dow Jones and Company.
14. With regard to Paragraph 47 of the Statement of Claim, particulars as to which information in the Second Article that was altered amounted to a tacit admission as alleged.
15. Particulars of the alleged damages referred to in Paragraph 53 of the Statement of Claim.
16. Particulars of the alleged damage to the Plaintiffs' reputations referred to in Paragraph 54 of the Statement of Claim.

The Defendant further requests inspection and production of a copy of the following documents referred to in the Statement of Claim:

1. Full copies of the articles referenced at Paragraph 26 of the Statement of Claim, if they include any articles other than the First Article and the Second Article;
2. Full copy of the First Article referenced at Paragraph 27 of the Statement of Claim;
3. Full copy of the tweet referenced at Paragraph 36 of the Statement of Claim;
4. Full copy of the tweet referenced at Paragraph 37 of the Statement of Claim;
5. Full copy of the tweet referenced at Paragraph 38 of the Statement of Claim; and
6. Full copy of the Second Article referenced at Paragraph 40 of the Statement of Claim.

January 12, 2018

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THE CATALYST CAPITAL GROUP INC.
et al
Plaintiffs

DOW JONES AND COMPANY et al.
Defendants

Court File No.: CV-17-586094

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

DEMAND FOR PARTICULARS

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THE CATALYST CAPITAL GROUP INC.
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Plaintiffs

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AFFIDAVIT

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McNish

Court File No.: CV-17-586094

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)), THE
)		
JUSTICE)	DAY OF	, 2018
)		

B E T W E E N :

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL
CORPORATION

Plaintiffs

- and -

DOW JONES AND COMPANY, ROB COPELAND, JACQUIE MCNISH and
JEFFREY MCFARLANE

Defendants

ORDER

THIS MOTION, made by the Defendants, Dow Jones and Company, Rob Copeland, Jacquie McNish, for and order transferring this action to the Commercial List and providing that this action be case managed together with the action bearing Court File No. CV-17-586096, was heard this day, at Toronto.

ON READING the Notice of Motion, Affidavit of Karina McIntosh dated January 18, 2018, and the Consent of certain Defendants to the action bearing Court File No. CV-17-586096, filed, and on hearing the submissions of the lawyer(s) for the moving parties and the Plaintiffs,

1. THIS COURT ORDERS that this action be and it is hereby transferred to the Commercial List.
2. THIS COURT ORDERS that this action be case managed together with the action bearing Court File No. CV-17-587463-00CL.

3. THIS COURT ORDERS that the Plaintiffs pay to the moving parties their costs of this motion fixed in the amount of \$_____.

THE CATALYST CAPITAL GROUP INC.
et al
Plaintiffs

DOW JONES AND COMPANY et al.
Defendants

Court File No.: CV-17-586094

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at **TORONTO**

ORDER

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Lawyers for the Defendants,
Dow Jones and Company, Rob Copeland and Jacquie
McNish

THE CATALYST CAPITAL GROUP INC.
et al
Plaintiffs

DOW JONES AND COMPANY et al.
Defendants

Court File No.: CV-17-586094

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

MOTION RECORD

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